

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 751**

**Introduced by Senator Morrow**

February 22, 2005

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An act to ~~amend Section 207 of~~ *add Section 671 to* the Penal Code, relating to ~~kidnapping~~ *sentencing enhancements*.

LEGISLATIVE COUNSEL'S DIGEST

SB 751, as amended, Morrow. ~~Kidnapping.~~ *Sentencing: enhancements.*

*Existing law establishes various sentencing enhancements for various crimes, circumstances, and conduct.*

*This bill would establish as a circumstance enhancing the sentence for certain felonies, engaging in human trafficking, as defined.*

*By increasing the burdens on local prosecuting authorities, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law defines the offense of kidnapping, including, among other things, to be taken or removed for the purpose and with the intent to sell that person into slavery or involuntary servitude, as specified.~~

~~This bill would specify that those provisions include slavery or involuntary servitude that is sexual.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 207 of the Penal Code is amended to~~  
2     ~~read:~~

3     ~~SECTION 1. Section 671 is added to the Penal Code, to read:~~

4     ~~671. (a) Every person who, during the commission of a~~  
5     ~~felony or attempted felony, as described below, engages in~~  
6     ~~human trafficking shall, in addition to any other punishment, be~~  
7     ~~punished by an additional term of imprisonment in the state~~  
8     ~~prison, as follows:~~

9     ~~(1) For the commission of a felony, or the attempted~~  
10    ~~commission of a felony, an additional nine years.~~

11    ~~(2) For the commission of a felony, or attempted commission~~  
12    ~~of a felony, against a minor, an additional 12 years.~~

13    ~~(3) For the commission of a felony, or attempted commission~~  
14    ~~of a felony, against a minor under 14 of age years, an additional~~  
15    ~~15 years.~~

16    ~~(b) For purposes of this section, the following definitions~~  
17    ~~apply:~~

18    ~~(1) "Human trafficking" means either of the following:~~

19    ~~(A) Knowingly recruiting, enticing, harboring, transporting,~~  
20    ~~providing, or obtaining by any means, another person, or the~~  
21    ~~attempt to do the same, intending or knowing that the person will~~  
22    ~~be subjected to forced labor or services, or benefitting financially~~  
23    ~~or by receiving anything of value from participation in a venture~~  
24    ~~engaging in the conduct prohibited by Section 181.~~

25    ~~(B) Knowingly or causing recruiting, enticing, harboring,~~  
26    ~~transporting, providing, or obtaining by any means, a minor~~  
27    ~~under 18 years of age, or the attempt to do the same, intending or~~  
28    ~~knowing that the person will engage in commercial sexual~~  
29    ~~activity, sexually explicit performance, or the production of~~  
30    ~~pornography.~~

31    ~~(2) "Commercial sexual activity" means any sex act on~~  
32    ~~account of which anything of values is given, promised to, or~~  
33    ~~received by, any person.~~

34    ~~(3) "Forced labor or services" means labor or services that~~  
35    ~~are performed or provided by another person and are obtained~~  
36    ~~or maintained through any of the following:~~

37    ~~(A) Causing or threatening to cause serious harm to any~~  
38    ~~person.~~

1     (B) *Physically restraining or threatening to physically restrain*  
2 *another person.*

3     (C) *Abusing or threatening to abuse the law or legal process.*

4     (D) *Knowingly destroying, concealing, removing,*  
5 *confiscating, or processing any actual or purported passport or*  
6 *other immigration document, or any other actual or purported*  
7 *government identification document, of another person.*

8     (E) *Blackmail, including, but not limited to, a threat to expose*  
9 *a secret tending to subject any person to hatred, contempt, or*  
10 *ridicule.*

11     (F) *Causing or threatening to cause financial harm to any*  
12 *person.*

13     (c) *“Labor” means work of economic or financial value.*

14     (d) *“Maintain” means, in relation to labor services, to secure*  
15 *continued performance thereof, regardless of any initial*  
16 *agreement on the part of the victim to perform that type of*  
17 *service.*

18     (e) *“Obtain” means, in relation to labor services, to secure*  
19 *performance thereof.*

20     (f) *“Services” means an ongoing relationship between a*  
21 *person and the actor in which the person performs activities*  
22 *under the supervision or for the benefit of the actor. Commercial*  
23 *sexual activity and sexually explicit performances are forms of*  
24 *services pursuant to this section. Nothing in this section shall be*  
25 *construed to legitimize or legalize prostitution.*

26     (g) *“Sexually explicit performance” means a live or public act*  
27 *or show intended to arouse or satisfy the sexual desires or appeal*  
28 *to the prurient interests of patrons.*

29     SEC. 2. *No reimbursement is required by this act pursuant to*  
30 *Section 6 of Article XIII B of the California Constitution because*  
31 *the only costs that may be incurred by a local agency or school*  
32 *district will be incurred because this act creates a new crime or*  
33 *infraction, eliminates a crime or infraction, or changes the*  
34 *penalty for a crime or infraction, within the meaning of Section*  
35 *17556 of the Government Code, or changes the definition of a*  
36 *crime within the meaning of Section 6 of Article XIII B of the*  
37 *California Constitution.*

38     207. ~~(a) Every person who forcibly, or by any other means of~~  
39 ~~instilling fear, steals or takes, or holds, detains, or arrests any~~  
40 ~~person in this state, and carries the person into another country,~~

1 state, or county, or into another part of the same county, is guilty  
2 of kidnapping.

3 (b) Every person, who for the purpose of committing any act  
4 defined in Section 288, hires, persuades, entices, decoys, or  
5 seduces by false promises, misrepresentations, or the like, any  
6 child under the age of 14 years to go out of this country, state, or  
7 county, or into another part of the same county, is guilty of  
8 kidnapping.

9 (c) Every person who forcibly, or by any other means of  
10 instilling fear, takes or holds, detains, or arrests any person, with  
11 a design to take the person out of this state, without having  
12 established a claim, according to the laws of the United States, or  
13 of this state, or who hires, persuades, entices, decoys, or seduces  
14 by false promises, misrepresentations, or the like, any person to  
15 go out of this state, or to be taken or removed therefrom, for the  
16 purpose and with the intent to sell that person into slavery or  
17 involuntary servitude, sexual or otherwise, or otherwise to  
18 employ that person for his or her own use, or to the use of  
19 another, without the free will and consent of that persuaded  
20 person, is guilty of kidnapping.

21 (d) Every person who, being out of this state, abducts or takes  
22 by force or fraud any person contrary to the law of the place  
23 where that act is committed, and brings, sends, or conveys that  
24 person within the limits of this state, and is afterwards found  
25 within the limits thereof, is guilty of kidnapping.

26 (e) For purposes of those types of kidnapping requiring force,  
27 the amount of force required to kidnap an unresisting infant or  
28 child is the amount of physical force required to take and carry  
29 the child away a substantial distance for an illegal purpose or  
30 with an illegal intent.

31 (f) Subdivisions (a) to (d), inclusive, do not apply to any of the  
32 following:

33 (1) To any person who steals, takes, entices away, detains,  
34 conceals, or harbors any child under the age of 14 years, if that  
35 act is taken to protect the child from danger of imminent harm.

36 (2) To any person acting under Section 834 or 837.